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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 735

VINCENT P. BRADY, *Cross-Petitioner,*

v.

TRANS WORLD AIRLINES, INC., *Respondent,*

and

THE INTERNATIONAL ASSOCIATION OF MACHINISTS, *Respondent.*

On Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT INTERNATIONAL ASSOCIATION OF MACHINISTS IN OPPOSITION

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The International Association of Machinists (IAM), a respondent in the above-entitled case, and a petitioner for a writ of certiorari in Case No. 712, involving the same litigation, submits this brief in opposition to the cross-petition of Vincent P. Brady for a

writ of certiorari to the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals, printed in Appendix B to the IAM petition in Case No. 712, is not yet reported. Decisions of the District Court are reproduced in Appendix D to the IAM petition in Case No. 712 and are reported as there indicated.

JURISDICTION

The jurisdictional requisites are adequately set forth in the cross-petition.

QUESTION PRESENTED

In the opinion of the respondent IAM, the cross-petition presents the question of whether the Court of Appeals erred in holding, after a trial on the merits showing no unfair union action, that cross-petitioner Brady, a shop steward knowledgeable of appellate union procedures, was required to invoke fair and adequate internal procedures of the IAM to redress asserted unfair action against him by local and district IAM officers as a condition precedent to his recovery on allegations that the IAM had violated its duty to him of fair representation.

STATUTES INVOLVED

The statutory provisions involved are Section 2, First; Section 2, Fourth; Section 2, Fifth; Section 2, Seventh; Section 2, 11th; and Section 204 of the Railway Labor Act (45 U.S.C.A., Section 152, First; Fourth; Fifth; Seventh; Eleventh; and Section 184). These statutory provisions are set forth in full in Appendix A to the IAM petition in Case No. 712.

STATEMENT

A statement of the case is set forth at pages 5-13 of the IAM petition in Case No. 712. A review of that statement and the record references will show many inaccuracies in the statement contained in the cross-petition. Certain additional comments are also required.

The cross-petition deals with the claim of Mr. Brady that local officers of the IAM treated him unfairly in demanding a reinstatement fee from him in order to maintain his good standing membership in the IAM and, hence, violated the duty of fair representation owed to him and the disposition by the Court of Appeals of this claim.

Mr. Brady's claim was not made until the filing of the Second Amended Complaint in the District Court on December 1, 1958, more than three years after the beginning of the controversy involved, the substance of which was that Mr. Brady had been treated unfairly in that other employees of Trans World Airlines, Inc. (TWA), equally delinquent in their dues payments had not been cited to TWA pursuant to the union security provisions of the IAM-TWA collective bargaining agreement. (R. 51)[1] This count of the amended complaint was directed solely at IAM and asked for damages only against IAM in connection with the claim. Thus, the statement in the cross-petition (page 2) to the effect that the union and employer joined in an "unholy alliance against an in-

[1] Reference is to pages of the printed Joint Appendix of IAM and TWA in the Court of Appeals, a certified copy of which is before the Court as a part of the record in connection with the IAM petition in Case No. 712 and the TWA petition in Case No. 713.

dividual employee" is a purely gratuitous statement without foundation in the record.

The statement in the cross-petition is equally fallacious in stating that IAM branded Mr. Brady as a troublemaker because of his opposition to a dues increase in the local lodge and caused his discharge for this reason. The fact is that the record shows that the dues increase was voted by the membership of the local lodge and no officer of the IAM was involved (R. 234, 348). No officer of the IAM was even aware of Mr. Brady's opposition to the dues increase until Mr. Brady made a written protest on February 9, 1956, to Mr. A. J. Hayes, then IAM president (R. 150, 352-356). On that date, Mr. Brady was already more than two months in arrears in the payment of his dues. Mr. Brady received a prompt and courteous reply to this protest (R. 255, 256), affirming the validity of the local lodge action. Thereafter, Mr. Brady did not make any appeal to the Executive Council of the IAM concerning the dues increase.

At no time did Mr. Brady ever raise with *any* officer of the IAM the question of the validity of General Chairman Miller's request for a reinstatement fee as a condition of his retaining his IAM membership.

Mr. Coleman, the Financial Secretary-Treasurer of the local lodge, who requested General Chairman Miller to cite Mr. Brady for violation of the union security provisions of the collective bargaining agreement, did not hold that position in November 1955 when the dues controversy arose in the local lodge and was in no way involved in the controversy (R. 182-184). He did not become Financial Secretary-Treasurer of Local Lodge 1776 until January 1956

(R. 185). Thereafter, he sought the same amount of dues from Mr. Brady for each month that he sought from everyone else and Mr. Brady refused (R. 185, 186, 234, 357).

Mr. Miller, General Chairman of the District Lodge of which Local Lodge 1776 was a part (R. 202, 203), was not even aware of Mr. Brady's continued opposition to the payment of the increased dues and his refusal to do so until he ran into Mr. Brady at the Philadelphia Airport on or about March 13, 1956. He then advised Mr. Brady to pay the dues under protest and process his protest through IAM channels (R. 205). He did not do this. Nor did Mr. Brady at any time suggest to anyone that he had been discriminated against by the local officers of the IAM prior to the time he filed his Second Amended Complaint on December 1, 1958. He made no such claim when he refused to pay a reinstatement fee to Mr. Miller (Exhibit P-19). Nor did Mr. Brady subsequently advance any such claim to the System Board of Adjustment set up pursuant to Section 204 of the Railway Labor Act (45 U.S.C.A., Section 184) to interpret and apply the IAM-TWA collective bargaining agreement including its union security provisions (Exhibit D-3). Such a claim was also not included in the original complaint filed on April 22, 1957, which was interpreted by the District Court as constituting "little more than an action sounding ex delicto or ex contractu" (Appendix D to IAM petition in Case No. 712, 64a). It was not until after this point that the amendment alleging discrimination by the IAM was filed.

Thereafter, a full trial on the question of liability was conducted by the District Court at which time Mr.

Brady had the opportunity to present all evidence relating to his claim that the IAM had discriminated against him. The following facts of record completely negate any inference of hostile discrimination or ill will by the IAM or any of its officers against Mr. Brady:

1. At the time Mr. Coleman, Financial Secretary-Treasurer of Lodge 1776, referred Mr. Brady's dues delinquency to the District Lodge for action by General Chairman Miller, Mr. Brady was the *only* member of Lodge 1776 who was delinquent in the payment of his dues. Every other member had paid his dues at the increased rate determined by the lodge at its November 1955 meeting (R. 167, 186, 187).

2. Mr. Brady lost his membership in the IAM and was cited for discharge pursuant to the union security provisions of the IAM-TWA collective bargaining agreement because he alone of all the members of Local Lodge 1776 absolutely refused to pay dues at the increased rate taking the constant position that he would not pay the new rate because he did not agree that it was validly adopted (R. 167, 185-187, 198).

3. Mr. Brady was asked repeatedly by the officers of Local Lodge 1776 and by others to pay his dues. He was advised that if he objected to the validity of the dues increase the proper procedure was to pay the dues under protest and then prosecute his protest within the IAM (R. 137, 138, 205).

4. Mr. Brady lost his membership in the IAM on March 1, 1956, and could at that time have been

compelled to pay a reinstatement fee. However, he was given an opportunity to get himself in good standing by merely bringing his dues up to date by the payment of four months' dues by March 28, 1956, an amount of only $13.00. He refused to avail himself of this opportunity because of his own determination that at that time he need only pay three months' dues although he then owed four months' dues (December 1955 through March 1956) as dues are due and payable the first of the month (R. 93-96).

5. Mr. Brady was given a full opportunity to preserve his membership in the IAM and his employment with TWA by the payment of a reinstatement fee but he declined to do so (R. 340, 346).

6. There is absolutely no testimony from Mr. Brady or any other witness that any officer of the IAM, of District Lodge 142, or of Local Lodge 1776, or any agent of the IAM bore Mr. Brady any malice or bad feeling.

The District Court rendered its decision on November 4, 1963[2] (Appendix D to IAM petition in Case No. 712, 88a), in which that court made no finding of any hostile discrimination against Mr. Brady.

On appeal, Mr. Brady argued to the Court of Appeals that the District Court erred in not finding hostile discrimination against him and awarding punitive damages therefor. The Court of Appeals rejected Mr.

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[2] *Brady* v. *TWA, et al.*, 223 F. Supp. 361.

Brady's argument with the following finding (Appendix D to IAM petition in Case No. 712, 36a-38a):

> "In a suit alleging hostile discrimination violative of the bargaining representative's duty of fair representation, it must be proved not only that the union's actions were improper, but that they were undertaken with malice and bad faith. Mr. Brady alleges that he was accorded different treatment from other members of his lodge who were similarly deliquent in their dues payments and also that at the hearing before the Board, Mr. Miller, an IAM official, misrepresented pertinent facts. In making these allegations, Mr. Brady is not challenging his discharge from his employment, but rather the fairness and propriety of the manner in which he was treated by IAM. Such a claim involves the union-member relationship and not the employer-employee relationship.
>
> "It has been the general rule, and the rule of this circuit, that before a suit against a union for breach of its duty of fair representation may be brought in the courts, the member must first exhaust the available internal union remedies, or show an adequate reason for failing to do so. There is good reason for this rule which forestalls judicial interference with the internal affairs of a labor organization until it has had at least some opportunity to resolve disputes concerning its own legitimate affairs. Mr. Brady was a shop steward and that he was knowledgeable of appellate union procedures may be inferred from his letter in February 1956 to the International President of IAM and others in which he protested the manner in which the dues of his local lodge were increased. Nevertheless, there is no allegation or evidence that he invoked any appellate union procedures to redress the asserted unfair and arbitrary action against him by the local and district officers. Nor does he advance an adequate reason for his failure

> to do so. Mr. Brady's argument that it would have been futile to ask IAM to review its own dealings with him is not tenable for IAM's internal procedure provided reasonably prompt review of his contentions on union levels higher than those responsible for the decisions against him."

The Court of Appeals decision also cited the decision of the United States Court of Appeals for the District of Columbia Circuit in *IAM* v. *Friedman,* 252 F. 2d 846, *cert. den.* 357 U.S. 926 (1958), in which the Court reviewed the internal appellate procedures of the IAM and found them to be fair and adequate.

It is this finding of the Court of Appeals to which the cross-petition is directed.

ARGUMENT

The cross-petition does not raise any issue warranting review by this Court.

The portion of the Court of Appeals decision to which the cross-petition is directed does not conflict with any other Court of Appeals decision on the subject matter. To the contrary, the proposition that a union member must exhaust available internal union remedies or show an adequate reason for failing to do so as a condition precedent to recovery of damages against a union or its officers for alleged breach of a duty of fair representations has also been enunciated by other Courts of Appeals and Federal district courts. *Neal* v. *System Board of Adjustment,* 348 F. 2d 722 (8th Cir., 1965); *Fagan* v. *Pennsylvania R. Co.,* 173 F. Supp. 465, 474 (M.D. Pa., 1959); *Martin* v. *Kansas City Southern R. Co.,* 197 F. Supp. 188,

192, 193 (W.D. La., 1961); *Long Island City Lodge 2147, et al.* v. *Railway Express Agency, et al.*, 217 F. Supp. 907, 909 (S.D. N.Y., 1963).[3] Moreover, the exhaustion requirement has been specifically written into Section 101(a)(4) of the Bill of Rights of individual union members of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A., Section 411 (a)(4)).

The cross-petition suggests (page 21) that the Court of Appeals ruling is in conflict with the decision of the Fifth Circuit in *Richardson* v. *Texas & New Orleans R. Co.*, 242 F. 2d 230 (1957), and of the Second Circuit in *Cunningham* v. *Erie R. Co.*, 358 F. 2d 640 (1966). However, a reading of these two decisions shows that neither concerned itself with the issue here involved.

The portion of the Court of Appeals decision to which the cross-petition is addressed is not in conflict with any decision of this Court nor does the cross-petition so claim.

The cross-petition asserts that the ruling of the Court of Appeals raises an important question of Federal law. However, this decision was not made in the context of an unanswered complaint in which the allegations of the complaint as to unfair treatment were required to be taken as true. The decision was made only after a full trial on the merits which showed that there was not in fact any discrimination against Mr.

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[3] Indeed, the Court of Appeals decision on this point does not go as far as the decisions in the cited cases in dismissing complaints which fail to allege the exhaustion of internal union remedies or adequate reason for failure to do so. (See pages 19-21 of the IAM Petition in Case No. 712.)

Brady by any local IAM officer, much less by anyone connected with the International (see record citations at page 6 above) and the District Court had not found any such union action.

The cross-petition also argues (page 22) that the Court of Appeals erred because Mr. Brady was never advised that he could appeal the validity within the IAM of the request from local officials for a reinstatement fee. The Court of Appeals decision finds, however, that Mr. Brady was a shop steward and that he was knowledgeable in appellate union procedures (page 8 above).

The cross-petition also argues (pages 24 and 25) that Mr. Brady could not utilize any internal union remedies because of the necessity to appeal his citation to the System Board of Adjustment. The Court of Appeals found that such an appeal would not have been futile (page 8 above). Moreover, Mr. Brady had a period of approximately 20 days between the time he was requested to pay a reinstatement fee (April 11, 1956) or be cited for violation of the union security provisions of the IAM-TWA collective bargaining agreement and the date on which he was cited to TWA (May 1, 1956) as being in violation of such provisions. This gave him ample time and opportunity to initiate an internal appeal of the validity of the request to him for a reinstatement fee and to ask that the union take no further action until his IAM appeal procedures had been exhausted. He did none of these things (Exhibit P-14). Instead, Mr. Brady promptly refused to pay the reinstatement fee and made an appeal to the System Board of Adjustment without even having been cited to that Board (Exhibit P-19; Exhibit D-3).

CONCLUSION

For the foregoing reasons it is respectfully submitted that the cross-petition for a writ of certiorari should be denied.

Respectfully submitted,

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